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COMMITTEE REPORT

May 16, 2013

**S. 460**

Introduced by Senator Hayes

S. Printed 5/16/13--H.

Read the first time April 9, 2013.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (S. 460) to amend Section 38‑45‑90, as amended, Code of Laws of South Carolina, 1976, relating to the duty of due care that a surplus lines insurance broker, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by deleting all after the enacting words and inserting:

/ SECTION 1. Section 38‑45‑90 of the 1976 Code, as last amended by Act 283 of 2012, is further amended to read:

“Section 38‑45‑90. (A) At the request of a licensed resident broker, the director or his designee may approve certain nonadmitted insurers as eligible surplus lines insurers to write business on risks located in this State that one or more insurers licensed in this State to write that line of business in this State have declined to write. The director or his designee may require the broker to submit, on behalf of the insurer, documents necessary to satisfy him that the insurer is licensed in his ~~home~~ domiciliary state, that ~~it is solvent~~ meets the minimum capital and surplus requirements of this State, and that its operation is not hazardous to the policyholders. The director or his designee may require the broker or the insurer to file additional documents at any time to maintain the insurer’s status as an eligible surplus lines insurer. For the purposes of this section, ‘domiciliary state’ means the state or jurisdiction in which an insurer is incorporated or organized. The director or his designee may withdraw his approval at any time the insurer fails to meet any of the requirements. While the insurer maintains his status as an eligible surplus lines insurer, a duly licensed broker, under the terms of this chapter, may place business with the insurer. An insurance broker shall exercise due care in the placing of insurance, except as provided in subsection (B). Each broker transacting business in the State during a calendar year shall file annually with the department within thirty days after December thirty‑first a detailed report of this business. The report must be in the form the director or his designee prescribes. The broker’s books, papers, and accounts must be open at all times to the inspection of the director or his designee.

(B) A surplus lines broker is not required to search with due diligence to determine whether the full amount or type of insurance can be obtained from an admitted insurer when the broker is seeking to procure or place nonadmitted insurance for an exempt commercial purchaser provided the:

(1) broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that the insurance may or may not be available from the admitted market and that insurance obtained from the admitted market may provide greater protection with more regulatory oversight; and

(2) exempt commercial purchaser has subsequently requested in writing for the broker to procure or place such insurance from a nonadmitted insurer.”

SECTION 2. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

WILLIAM E. SANDIFER III for Committee.

**A** **BILL**

TO AMEND SECTION 38‑45‑90, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DUTY OF DUE CARE THAT A SURPLUS LINES INSURANCE BROKER MUST EXERCISE WHEN PLACING BUSINESS WITH NONADMITTED INSURERS, SO AS TO EXEMPT THOSE BROKERS FROM THIS REQUIREMENT WHEN SEEKING TO PROCURE OR PLACE NONADMITTED INSURANCE FOR AN EXEMPT COMMERCIAL PURCHASER IN CERTAIN CIRCUMSTANCES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 38‑45‑90 of the 1976 Code, as last amended by Act 283 of 2012, is further amended to read:

“Section 38‑45‑90. (A) At the request of a licensed resident broker, the director or his designee may approve certain nonadmitted insurers as eligible surplus lines insurers to write business on risks located in this State that one or more insurers licensed in this State to write that line of business in this State have declined to write. The director or his designee may require the broker to submit, on behalf of the insurer, documents necessary to satisfy him that the insurer is licensed in his home state, that it is solvent, and that its operation is not hazardous to the policyholders. The director or his designee may require the broker or the insurer to file additional documents at any time to maintain the insurer’s status as an eligible surplus lines insurer. The director or his designee may withdraw his approval at any time the insurer fails to meet any of the requirements. While the insurer maintains his status as an eligible surplus lines insurer, a duly licensed broker, under the terms of this chapter, may place business with the insurer. An insurance broker shall exercise due care in the placing of insurance, except as provided in subsection (B). Each broker transacting business in the State during a calendar year shall file annually with the department within thirty days after December thirty‑first a detailed report of this business. The report must be in the form the director or his designee prescribes. The broker’s books, papers, and accounts must be open at all times to the inspection of the director or his designee.

(B) A surplus lines broker is not required to search with due diligence to determine whether the full amount or type of insurance can be obtained from an admitted insurer when the broker is seeking to procure or place nonadmitted insurance for an exempt commercial purchaser provided the:

(1) broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that the insurance may or may not be available from the admitted market and that insurance obtained from the admitted market may provide greater protection with more regulatory oversight; and

(2) exempt commercial purchaser has subsequently requested in writing for the broker to procure or place such insurance from a nonadmitted insurer.”

SECTION 2. This act takes effect upon approval by the Governor.

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